

ORAL ARGUMENT NOT YET SCHEDULED  
No. 18-3052

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IN THE  
**United States Court of Appeals  
for the District of Columbia Circuit**

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IN RE: GRAND JURY INVESTIGATION

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ANDREW MILLER,  
*Appellant,*  
v.

UNITED STATES OF AMERICA,  
*Appellee.*

CONCORD MANAGEMENT AND CONSULTING LLC,  
*Amicus Curiae.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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**UNOPPOSED MOTION TO EXCEED WORD LIMITS OF *AMICUS  
CURIAE* BRIEF OF CONCORD MANAGEMENT AND CONSULTING  
LLC**

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*Amicus curiae* Concord Management and Consulting LLC (“Concord”) hereby requests that the Court enlarge the word limit for Concord’s *amicus* brief from 6,500 words to 8,000 words. Concord respectfully seeks expeditious consideration of this unopposed request because the expedited briefing schedule requires Concord to file its *amicus* brief no later than next Friday, September 14, 2018.

Pursuant to Circuit Rule 27(h)(2), Concord has informed the parties of its intent to seek the relief requested in this motion. Appellant Andrew Miller consents to the relief requested. Appellee United States of America, per Special Counsel Robert S. Mueller III (the “Special Counsel”), does not oppose the relief requested.

In support of this motion, Concord states as follows:

1. Appellant Andrew Miller filed this appeal on August 13, 2018, following the August 10, 2018 decision by the district court (Howell, C.J.) holding him in civil contempt for refusing to appear before the grand jury on August 10 pursuant to grand jury-issued subpoenas. That contempt finding followed from the district court’s prior ruling, on July 31, 2018, denying Mr. Miller’s motion to quash the subpoenas on grounds that the Special Counsel was unconstitutionally appointed in violation of the Appointments Clause of the U.S. Constitution.

2. Mr. Miller had attached to his motion the entirety of Concord’s motion to dismiss an indictment signed by the Special Counsel, which motion Concord had filed in a separate criminal action three days before Mr. Miller’s motion. *See* Case No. 1:18-cr-32-DLF-2 (D.D.C.), ECF No. 36. In her 92-page, published opinion denying

Mr. Miller's motion, Chief Judge Howell effectively denied Concord's motion to dismiss, citing it 22 times and explicitly referencing and rejecting Concord's arguments. *See In re Grand Jury Investigation*, 315 F. Supp. 3d 602 (D.D.C. 2018). A few weeks later, Judge Friedrich reached the same ultimate conclusion in a 41-page, published opinion entered in Concord's case that differed in many respects from the analysis contained in Chief Judge Howell's opinion. *See United States v. Concord Mgmt. & Consulting LLC*, 317 F. Supp. 3d 598 (D.D.C. 2018).

3. Two days after Mr. Miller's appeal was docketed, on August 16, 2018, this Court issued an expedited briefing schedule *sua sponte* directing Mr. Miller to file his opening brief no later than September 7, 2018; the Special Counsel to file his principal brief no later than September 28; and Mr. Miller to file his reply brief no later than October 9.

4. Less than a week later, Concord moved to intervene in this appeal. On August 30, 2018, this Court denied Concord's motion to intervene, but *sua sponte* permitted Concord to file a brief as *amicus curiae* in this case.

5. Concord's *amicus* brief is currently due to be filed on or before next Friday, September 14.

6. By rule, *amicus* briefs are limited to one-half the maximum length authorized by the rules for a party's principal brief, or 6,500 words. *See* Fed. R. App. P. 29(a)(5). A party's brief, on the other hand, is limited to 13,000 words. *See* Fed. R.

App. P. 32(a)(7)(B). Absent the Court's permission, Concord is not permitted to file a reply brief. *See* Fed. R. App. P. 29(a)(7).

7. After carefully evaluating the trial court briefing, the published opinions issued by Chief Judge Howell and Judge Friedrich, and the framing of the issues in this appeal, Concord respectfully requests that this Court enter an order enlarging the word count for Concord's *amicus* brief by 1,500 words, to 8,000 words.

8. The enlargement of the word limit Concord seeks is appropriate under the unique circumstances here. This appeal involves serious constitutional questions of great importance, as evidenced by Chief Judge Howell's 92-page ruling addressing the Appointments Clause issues raised by Concord's and Mr. Miller's motions. That ruling, as noted, focused heavily on Concord's arguments and how it formulated and developed them in its dismissal brief in its own case. Permitting Concord sufficient words to similarly develop its arguments fully in this Court will aid the Court's understanding of the constitutional issues and assist it in reaching a comprehensive and well-informed decision.

WHEREFORE, Concord respectfully requests that this Court enter an order enlarging the word count for Concord's *amicus* brief to 8,000 words.

Dated: September 7, 2018

Respectfully submitted,

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## **CERTIFICATE OF COMPLIANCE**

On this seventh day of September, 2018, the undersigned certifies that:

1. The foregoing motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because the motion contains 696 words, as determined by the word-count function of Microsoft Word 2010; and

2. As required by Federal Rule of Appellate Procedure 27(d)(1)(E), the foregoing motion complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because the motion has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Garamond font.

/s/ James C. Martin  
James C. Martin

## **CERTIFICATE OF SERVICE**

Pursuant to Federal Rule of Appellate Procedure 25(d), the undersigned certifies that on this seventh day of September, 2018, he caused the foregoing motion to be filed electronically with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. Pursuant to Circuit Rule 27(b), four (4) copies of the foregoing motion will be hand-delivered to the Clerk of the Court Monday, September 10, 2018. The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

/s/ James C. Martin  
James C. Martin